

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: ) Art Unit: 1645  
)  
KOPCHICK, et al. ) Examiner:  
)  
Serial No.: 10/524,237 ) Washington, D.C.  
)  
Filed: March 29, 2006 ) October 25, 2007  
)  
For: DIAGNOSIS OF KIDNEY ) Docket No.: KOPCHICK=5A  
DAMAGE AND PROTECTION )  
AGAINST SAME ) Confirmation No.: 8623

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND  
CHANGE OF CORRESPONDENCE ADDRESS PURSUANT TO  
37 CFR 1.36(b) AND 10.40(c)

U.S. Patent and Trademark Office  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

S i r :

Pursuant to 37 CFR 1.36(b) and 10.40(c), please withdraw me, and all attorneys and agents of record or associated with customer number 001444, as attorneys or agents for the above-identified application.

1. The reasons for the request are:

1.1. Implied Consent Under 37 CFR 10.40(c)(5). Client Ohio University has knowingly and freely assented to termination of the employment. Ohio University is a state University, and Counsel is formally retained by the Attorney General of the State of Ohio, to represent OU as a "Special Counsel". Article VII, Section 7, clause A of the Retention Agreement<sup>1</sup> permits "special counsel" to withdraw from representation on thirty days notice. Notice was given on October 15, effective November 30, which is more than thirty days notice. Hence withdrawal is proper if effective on November 30, or such later date as may be approved by the PTO.

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<sup>1</sup> The last signed retention agreement was the FY 2007 retention agreement. Counsel has refused to sign the FY2008 retention agreement for various reasons, including those set forth in sections 2 and 3 below. However, the FY2008 retention agreement, drafted by the Office of the Attorney General of the State of Ohio, contains an identical withdrawal provision, so the client clearly consents to withdrawal under such circumstances.

1.2. Failure to Timely Pay Bills Under 37 CFR 10.40(c)(1)(vi). Client Ohio University has failed to pay one or more bills, rendered by the practitioner, for an unreasonable period of time<sup>2</sup>. According to our records, \$128,377.71 in unpaid bills were billed over 180 days ago, and the oldest unpaid bills are dated February 7, 2006.

1.3. Irreconcilable differences under 37 CFR 10.40(c)(6). The practitioner believes in good faith that the office will find the existence of other good cause for withdrawal, namely, irreconcilable differences as to future terms of employment.

In particular, the Attorney General of the State of Ohio, on behalf of client Ohio University, has refused to grant Counsel a fee increase (from a discounted rate set in 2001) which was timely requested on January 17, 2007 and again on April 5, 2007.

2. Effective on approval of this request, please change the correspondence address for this case and direct all further correspondence to:

Robert Malott  
Ohio University  
Technology Transfer Office  
340 West State Street - Unit 14  
Athens, OH 45701

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
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<sup>2</sup> These unpaid bills were not necessarily specific to this case. As we understand 37 CFR 10.40(c)(1)(vi), it is triggered by failure to timely pay any bills rendered by the practitioner, not just bills for work in the case from which withdrawal is sought.